

**ZONING BOARD OF ADJUSTMENT
MINUTES
OCTOBER 7, 2003
(Approved as amended 11/4/03)**

PRESENT: Forrest Esenwine, Chairman; Jack Dearborn, Vice Chairman; June Purington; Harry Wetherbee; Tim Galvin, Alternate; Naomi Bolton, Land Use Coordinator

GUESTS: Holly Hill Farm Trust, James Coughlin, Trustee; Eric C. Mitchell; Ronald A. Morse; Karen Car; Michael Allard; Roy Tilsley; Paul Dugas, NBAC; David Eric Welch; Robert Brown; Robert C. Palmer; Michael J. Ryan; Steven Daniels; William Miller; Richard Brown; Janet Brown; Burt Brown; Ginger Esenwine; Paul Naves; Catherine Naves; Robert Hendsbee; Bruce Fillmore; Nancy Fillmore; Richard Head; Tricia Hayes; Art Siciliano.

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine explained the process by which the board conducts business. Chairman Esenwine appointed Tim Galvin to sit as a voting member for tonight's cases. Chairman Esenwine explained that at 10:00 PM those hearings that have not been conducted will be automatically continued to the next month.

II. PUBLIC HEARINGS:

Case #2903 David E. Welch (Continued Hearing)
Special Exception, Article 24, Section 24.8
Applicant is seeking permission to allow off street parking within the front and side setbacks.
Tax Map 109-017 299 South Stark Highway

Roy Tilsley, attorney and Robert Palmer, LLS were present. David Welch was also present. Mr. Tilsley gave the board a copy of a survey, which is the same survey with the four property distances added. A distance was also added indicating that the front part of parking spot 7, will be 3.5 feet from the abutter's lot line. The board discussed how many parking spots might be lost if the side setback is to be maintained versus this request.

Approving Abutters: NONE

Disapproving Abutters: Ronald Morse, 289 South Stark Highway, stated that he is opposed to this proposal. Mr. Morse stated that there are noises all hours of the night. Mr. Morse also disputed the commercial zone versus the residential zone. The driveway entrance was also an issue with Mr. Morse with regard to not having any setback from his property.

Robert Hendsbee, 281 South Stark Highway, owner of Autumn Hills Campground said he has constant complaints from his campers about the ongoing all night auto mobile related noises, racing engines, etc.

Karen Car, 309 South Stark Highway, handed the board a letter from Mr. Robert Nichols, 313 South Stark Highway for the record. Mr. Nichols is not a direct abutter but has a few concerns; first is that his well sits extremely close to the road and is concerned with all the down hill runoff possibly contaminating his well; traffic was another concern as well as the noises all hours of the evening.

Mrs. Car then read her rebuttal to the seven points for the special exception as follows:

1. How can a display area in the front of 299 South Stark Highway be beneficial to the development of the community when the Planning Board on October 10, 2002 had concerns about traffic and safety issues. At the present time our child cannot be picked up in front or our residence by the school bus system due to safety issues and sight distance on Route 114. This property packed with 19 spaces out front would be a dangerous stretch of Route 114 with people pulling into and backing out of, speed of passing cars and lack of sight distance for cars traveling north on Route 114.
2. This would adversely affect the neighborhood by reducing the property values. We feel having used cars parked four feet from our property line will greatly reduce our property value. To our knowledge there are no other used car dealers in Town where cars are displayed within 150 feet of abutting residential dwellings. The primary use of 309 South Stark Highway is a residence. 95% of all traffic in and out of our driveway is a residence. The business is 100% wholesale with no display areas. Our business only uses 25% of our home and has no retail sales. People seeking used cars will have no affect on my future business seeing I'm strictly wholesale. One of the main reasons for us not to open a retail store at this location was because of the dangerous traffic access. We feel the only one who would benefit from his business at our expense is Mr. Welch.
3. This proposed area would be a nuisance and serious hazard to all traffic traveling in this section of Route 114. Cars traveling north have no sight distance to know if someone is waiting to turn left when coming over the hill. There is no guarantee any car will properly park in designated areas, and not park or turn around in my driveway, or park on the side of the road. Has the State been notified and has a scaled plan been submitted detailing contours and drainage structures. We feel this should be approved by the State before any changes are made in front of 299 South Stark Highway at the request of the State of NH DOT access technician Scott Looney. According to the State the 400 foot sight distance is for a 30 MPH zone. This will affect the Town by safety concerns and traffic issues as stated by the Planning Board minutes of October 2002.
4. We feel the 30 foot buffer zone is necessary to maintain our life style and likes. Because Mr. Welch in the past when given permission for a limited used car sales lot, he was found in several violations by the Planning Board which were rectified only after being brought in front of the Planning Board. His past history shows he does not comply with rules set forth by the Town, Mr. Welch shows no regard or respect for his neighbors. In return we would like to see the business not get any bigger until he can comply with what he was given permission for so far. We also feel that it will be dangerous for any cars to be parked out front for display, it will only cause distraction to passing motorists.

Public At Large: NONE
Other Boards: NONE

Rebuttal of Applicant: Mr. Tilsley responded briefly they are in compliance as of May 2003 to the site plan that was previously approved.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:26 PM.

Case #3103 NBAC Corporation (Continued Hearing)
Special Exception, Article 28, Section 28.7 and

Case #3203 Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.

Tax Map 405-062

South Stark Highway

Paul Dugas, NBAC and David Hilts, attorney from Hebert & Uchida were present. Mr. Dugas stated that since the last meeting they went to the planning board. They received comments from the Planning Board and from those comments they have changed the plan and gave the board a new plan. This new plan hasn't been seen by the Planning Board. The new plan consists of 60 lots and about 8,000 feet of road, just configured a little bit differently from the previous plan. Mr. Dugas asked that the wetlands crossing hearing be tabled until the design gets closer to the final stages, because there may be some design changes to the plan and the wetlands crossings may not be needed, but this will not be determined until later on in the project.

Harry Wetherbee asked if he could get a copy of the Aries Engineering Impact Study on the aquifer impact that this project might have. The board informed Mr. Dugas that they won't grant the special exception for individual well and septic until such time that the State Subdivision approval has been granted. This is the procedure that they followed in the last one and are following it for everyone.

Chairman Esenwine asked Mr. Dugas if he would be requesting a continuance until such time that they receive State subdivision approval. Chairman Esenwine pointed out that all Mr. Dugas would have to do it to contact Naomi when they receive it and they could be put on the next agenda, but the abutters would have to be notified. Jack Dearborn moved that the applicant be required to come back within 7 months, or come back and request an extension before the expiration, Tim Galvin seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3303 William Boisvert
Special Exception, Article 28, Section 28.7.1

Applicant is requesting permission to permit construction of a common driveway and associated grading within an area that has been defined as a wetland.

Tax Map 109-016

South Stark Highway

Mike Ryan, attorney and Robert Palmer, LLS were present for this hearing. The board reviewed the application to determine completeness. Chairman Esenwine moved to accept the application as complete, Tim Galvin seconded the motion, all in favor. Mr. Ryan explained that they are here requesting a special exception to allow the common driveway to cross the wetlands. Mr. Palmer stated that they have received the State wetlands permit for this. Mr. Ryan then went through the seven points for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: will allow for subdivision in an area that is suited for residential use.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: will not reduce real estate values in the area.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: will not impact vehicular traffic and does not pose either a nuisance or serious hazard to pedestrians.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: proposed use will not cause undue burden on Town services, because it will only be adding 4 new lots.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: each lot will have own parking area.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: Use is allowed in zone without the requirement of additional buffering.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards:

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 9:19 PM.

Case #3403 William Boisvert

Special Exception, Article 28, Section 28.7.1

Special Exception, Article 27, Section 27.3.10

Applicant is requesting permission to permit construction of a common driveway and associated grading within an area that has been identified as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.

Tax Map 412-185.012 & 412-194.001

So. Stark Hwy & Hoit Mill Rd

Mike Ryan, attorney and Robert Palmer, LLS were present for this hearing. The board reviewed the application to determine completeness. Chairman Esenwine moved to accept the application as complete, June Purington seconded the motion, all in favor. Mr. Ryan explained that they are here requesting a special exception to allow the common driveway to cross the wetlands. Mr. Palmer stated that they have received the State wetlands permit for this. Mr. Ryan then went through the seven points for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: lots will become part of existing cluster development.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: Neighborhood is residential.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: proposed use will not be a nuisance in that it will allow for additional home lots.

4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: will not increase use of Town services in neighborhood.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: each lot will have parking for houses.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: Buffer as required for cluster development already exists.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other boards: NONE

Being there were no further comments or question, Chairman Esenwine closed this hearing at 9:28 PM.

Case #3503 Holly Hill Farm (James Coughlin, Trustee)
Special Exception, Article 28, Section 28.7.1 and
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 405-073 Flanders Memorial Road

Eric Mitchell and James Coughlin were present for this hearing. Mr. Mitchell and Mr. Coughlin stated that they were here at the previous hearing and they understand that they need the State approvals in hand to obtain approval. State Subdivision approval, State site specific permit and State wetlands permit are still outstanding. The Planning Board conditionally approved this plan subject to a few outstanding items, one being receiving both special exceptions from the zoning board. Chairman Esenwine moved to continue this hearing November 4, 2003, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3603 Homes for a Lifetime, LLC
Special Exception, Article 19, Section 19.1.10
Applicant is requesting permission of the addition of an accessory apartment.
Tax Map 411-206 181 Gould Road

Bruce and Nancy Fillmore were present. The board reviewed the application for completeness. Tim Galvin moved to accept the application as complete, Chairman Esenwine seconded the motion, all in favor. Mrs. Fillmore stated that they would like to put on an addition for her parents. They are both retired and one is confined to a wheelchair. Mr. Fillmore gave the board a copy of a State approval for the addition to the septic for this apartment. Mr. Fillmore went through the seven conditions as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: Approximately 65 acre lot with currently a single family residence would have minimal impact and would be in keeping with the rural character of the neighborhood.

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The existing home is only visible by two abutters, I do not believe that the proposed addition will be visible by any abutter.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: the apartment will be setback from the street 500'+ and with the addition of 1 vehicle there will be minimal impact on vehicular traffic or pedestrians.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed addition will be occupied by 2 retired adults creating no impact on the school system and minimal impact on other Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: 1 parking space is to be provided per article 19.1.10.6 requirements.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: There are no buffer trees to be cut in the construction of this apartment.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: This application is in full compliance with Article 19, Section 19.1.10, as such, there should be no further restrictions.

The board also went through the additional requirements spelled out in section 19.1.10 and the application appears to meet those requirements as well.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public At Large: NONE
Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 10:00 PM.

Case #3703 Tarand Development, LLC
Special Exception, Article 28, Section 28.7.1
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been identified as a wetland.
Tax Map 409-159.006 High Rock Road

Tricia Hayes, attorney and Art Siciliano, LLS were present. The board reviewed the application for completeness. Chairman Esenwine made a motion to accept the application as complete, Tim Galvin seconded the motion, all in favor. Ms. Hayes explained that this request for a special exception to allow the wetlands crossing, already approved by the State Wetlands Bureau. Ms. Hayes went through the seven conditions as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: The proposed use is an appropriate location for such use in terms of overall community development because it fosters a permitted use and minimizes any wetland impact from such permitted use. The proposed roadway will service the residential development on the north side of High Rock Road, which is a permitted use under the Ordinance. The proposed roadway will provide appropriate access to the development with a minimum of impact on the wetland area.

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed wetlands crossing will not cause any significant diminution of the surrounding property values. It will meet the Town's standards for such crossing, the attendant use for permitted residential use is consistent with, and will not substantially affect, the character of the neighborhood.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: The proposed wetlands crossing will be neither a nuisance nor a serious hazard to vehicular or pedestrian traffic, as the proposed use will not have a noticeable impact on traffic levels.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed wetlands crossing will not significantly affect the Town through the basic provision of Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: Adequate off-street parking is available for the construction of the proposed roadway. Offstreet parking will not be required after the proposed roadway is constructed.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: A buffer will not likely be necessitated by this application, but the Applicant is willing to cooperate with the suggestions of the Town on this matter.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: The Applicant is willing to cooperate with the Board to ensure that the proposed use complies with the Town Ordinance.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed the hearing at 10:13 PM.

III. CASE DECISION:

Case #2903 David E. Welch (Continued Hearing)

Special Exception, Article 24, Section 24.8

Applicant is seeking permission to allow off street parking within the front and side setbacks.

Tax Map 109-017

299 South Stark Highway

The board proceeded through the seven conditions as follows: Condition #1: Chairman Esenwine moved to accept condition #1, Harry Wetherbee seconded the motion. Chairman Esenwine stated that it is in the commercial zone which allows what he is requesting. A vote was taken: unanimous vote in favor (Purinton, Wetherbee, Dearborn, Esenwine, Galvin). Condition #2: Harry Wetherbee moved to accept condition #2, June Purinton seconded the motion. A vote was taken: 3 in favor (Wetherbee, Dearborn, Galvin) and 2 opposed (Esenwine, Purinton), motion passes. Condition #3: June Purinton moved to accept condition #3, Chairman Esenwine seconded the motion. Discussion: The board felt that the only way you would know the safety would be from the State of NH DOT, because it is a regulatory issue in their jurisdiction. The board felt that the answer provided doesn't have the factual information to back up the response. A vote was taken: unanimous opposed (Purinton, Wetherbee, Dearborn, Esenwine, Galvin). Condition #4: Harry Wetherbee moved to accept condition #4, June Purinton seconded the motion, unanimous vote in favor (Purinton,

Wetherbee, Dearborn, Esenwine, Galvin). Condition #5: Chairman Esenwine moved to accept condition #5, Tim Galvin seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Condition #6: June Purington moved to accept condition #6, Chairman Esenwine seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Chairman Esenwine moved to grant the special exception for Case #2903, June Purington seconded the motion. Discussion: The board felt that the 30 foot buffer should be adhered to. The board also felt that condition #3 was not met. In order for the board to make that determination we need to see State approval before us. A vote was taken: Unanimous against (Purington, Wetherbee, Dearborn, Esenwine, Galvin), therefore the motion fails because there was not enough evidence provided to vote in favor of point #3.

Case #3103 NBAC Corporation (Continued Hearing)
Special Exception, Article 28, Section 28.7 and

Case #3203 Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 405-062 South Stark Highway

This was tabled earlier in the evening for a maximum of 7 months. The applicant is to inform Naomi when he needs to go on the agenda or request an extension of time.

Case #3303 William Boisvert
Special Exception, Article 28, Section 28.7.1
Applicant is requesting permission to permit construction of a common driveway and associated grading within an area that has been defined as a wetland.
Tax Map 109-016 South Stark Highway

Jack Dearborn moved to grant the special exception on Case #3303 as requested, June Purington seconded the motion, unanimous vote in favor. (Purington, Wetherbee, Dearborn, Esenwine, Galvin)

Case #3403 William Boisvert
Special Exception, Article 28, Section 28.7.1
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to permit construction of a common driveway and associated grading within an area that has been identified as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 412-185.012 & 412-194.001 So. Stark Hwy & Hoit Mill Rd

Jack Dearborn moved to grant the special exception on Case #3403 as requested, Tim Galvin seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3503 Holly Hill Farm (James Coughlin, Trustee)
Special Exception, Article 28, Section 28.7.1 and
Special Exception, Article 27, Section 27.3.10

Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.

Tax Map 405-073 Flanders Memorial Road

This hearing was continued to November 4, 2003.

Case #3603 Homes for a Lifetime, LLC
Special Exception, Article 19, Section 19.1.10
Applicant is requesting permission of the addition of an accessory apartment.
Tax Map 411-206 181 Gould Road

Jack Dearborn moved to grant the special exception on Case #3603, Harry Wetherbee seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3703 Tarand Development, LLC
Special Exception, Article 28, Section 28.7.1
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been identified as a wetland.
Tax Map 409-159.006 High Rock Road

Jack Dearborn moved to grant the special exception on Case #3703, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

IV. OTHER BUSINESS:

JOINT MEETING WITH BOARD OF SELECTMEN: Naomi wanted to inform the board that there is a joint non-public meeting with the Board of Selectmen and Town Counsel on Monday, October 20, 2003 at 6:30 PM.

V. ADJOURNMENT:

As there was no further business to come before the board, Jack Dearborn moved to adjourn the meeting at 11:00 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator